IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8460 OF 2004

Bapurao Shivada Deore & Ors. .. Petitioner

Versus

The Sugar Commissioner -
Additional Registrar, Coop.
Societies & Ors. .. Respondents

Mr.Anilkumar Patil for petitioner
Mr.Y.D.Mulani, A.G.P. for respondent Nos. 1 to 3

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.
DATE : 6TH DECEMBER 2004.

P.C.

. By this writ petition under Article 226 of the Constitution of India, petitioners pray for following reliefs:-

(c) That this Hon’ble Court be pleased to issue Writ of Mandamus or any other appropriate Order, direction in the nature of Writ of Mandamus or any other appropriate Writ and be pleased to direct the respondent No.1 to decide the representation/ letter dated 4th August 2004, by giving time bound schedule.

(c) That this Hon’ble Court be pleased to direct the respondents to secure and decide the claims of the petitioners and other workers about their legal dues about arrears of salary etc. within time bound schedule.

2. It is not in dispute that Girna Sahakari Sakhar Karkhana Ltd. in Dabhodi, Nashik District has been subject matter of liquidation proceedings under section 105 of Maharashtra Cooperative Societies Act, 1960 (hereinafter MCS Act). The District Deputy Registrar is appointed as Liquidator by the State Government. Petitioners are some of the workers of this sugar

factory. It is not disputed before us that the order of liquidation is dated 7th July 1997. Valuation of assets has been done in liquidation proceedings and report has been submitted to the Commissioner of Sugar. It is pointed out to us that the Commissioner of Sugar has formed a committee to go into the recommendations for sale of assets of sugar factory and he has in turn addressed a letter to the Secretary, Department of Cooperation and Marketing, Government of Maharashtra enclosing his report. It is pointed out to us that outstanding payable to sugar factory employees will be ascertained and the amount will be paid as per the procedure laid down in the MCS Act and the Rules. There are some amounts which have been disbursed by Liquidator. Details of such disbursements are placed on affidavit. It is contended that liquidator has taken all precautions to safeguard the properties and assets of sugar factory. Details of workmen employed by the sugar factory have also been placed on affidavit. It is pointed out to us that proceedings have been initiated against the sugar factory by Financial Institutions and Banks before the Debt Recovery

Tribunal and the DRT has issued recovery certificate in their favour. The Recovery Officer attached to D.R.T. concerned has passed an order on 12th August 2004 attaching the property of factory for recovery of the dues of Rs.1102.99 Lakhs.

3. We have heard Mr.Patil appearing for petitioners and Mr.Mulani, A.G.P. for respondent Nos. 1 to 3. We had issued notice to the District Dy.Registrar and Liquidator to remain present with necessary record as also to place on affidavit the steps taken by him. The affidavit has been placed on record by the Liquidator.

4. Mr.Patil, learned Counsel appearing for petitioner contends that in terms of the circular of Commissioner of Cooperation dated 22nd August 1989 , first priority is given to liquidator’s honourarium and second priority is to the dues of employees of Karkhana. Therefore, grievance made vide representation referred to above needs to be redressed as expeditiously as possible. He submits that the workers have waited for considerable length of time for getting their

dues but the process has been delayed. Consequently, they are suffering great hardship.

5. In our view, in the light of the development viz., attachment of properties of sugar factory by the Recovery Officer of D.R.T. we cannot issue any directions, much less pertaining to the dues of employees of sugar factory. The Recovery of Debts due to Banks and Financial Institutions Act, 1993. Section 34 of the said Act reads thus:-

> "34. Act to have over-riding effect:- (1) Save as otherwise provided in sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
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> (2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act,

1948 (15 of 1948), the State Financial Corporation Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Indsutrial Reconstruction Bank of India Act, 1984 (62 of 1984) and the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986).

6.I In the case of Allahabad Bank Vs. Canara Bank, reported in A.I.R. 2000 S.C. 1535 the Supreme Court has observed that the provisions of D.R.T. Act would prevail upon all Statutes save and except section 529-A of the Companies Act, 1956. Section 529-A of the Companies Act gives priority to dues of workmen and ranks them on par with the dues of secured creditors of the borrower companies. Learned Counsel appearing before us relied upon the circular dated 22nd August 1989.

7. We are of the view that instead of deciding the issue finally in these proceedings, interest of justice would be served if we direct liquidator as well as petitioner to make

necessary application before the Recovery Officer, D.R.T. and request him to detemine the priorities of claims. We have no manner of doubt that if necessary application for intervention/ impleadment is made the Recovery Officer will consider the claim of workmen of the Sugar factory and pass appropriate orders in accordance with law, after hearing them as well as the liquidator. We leave all contentions expressly open to be agitated by the parties. We have merely invited attention of the parties to the legal position. Beyond that we express nothing. It will be for the Recovery Officer to pass appropriate orders in accordance with law after hearing parties.

8. Needless to observe that the R.D.B. Act is a complete code providing for appeal against the order of Recovery Officer to D.R.T. and further appeal to D.R.A.T. Therefore, petitioners before us will have to pursue all these remedies.

9. With the aforesaid observations we dispose of the present petition. We hope that

the Special Recovery Officer will decide the claim of petitioners as expeditiously as possible considering the fact that they have been waiting for all this time for payment of their just and legitimate dues.

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